

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

MEETING DATE: 7/20/05

DIVISION: COUNTY ADMINISTRATOR

BULK ITEM: YES

DEPARTMENT: AIRPORTS

STAFF CONTACT PERSON: Peter Horton

AGENDA ITEM WORDING: Approval for the Mayor to sign the Avigation Easements for the Noise Insulation Program for the Key West International Airport.

ITEM BACKGROUND: Each phase of the NIP has 50 to 60 homeowners participating. The Avigation Easement is one of the required documents for each participating homeowner. Rather than bringing the Easements to the BOCC individually, we wish to have the Mayor execute as the easements are completed by each homeowner.

PREVIOUS RELEVANT BOCC ACTION: Approval to submit PFC Application # 4, 7/1/00, # 5, 1/2/01, # 6, 3/20/02, # 7, 2/19/03, # 8, 10/15/03, and # 9, 8/18/04.

CONTRACT/AGREEMENT CHANGES: Standard Avigation Easement for the NIP Program

STAFF RECOMMENDATION: Approval

TOTAL COST: None

BUDGETED: N/A

COST TO AIRPORT: None

SOURCE OF FUNDS: N/A

COST TO PFC: None

COST TO COUNTY: None

REVENUE PRODUCING: No

AMOUNT PER MONTH /YEAR:

APPROVED BY: County Attorney X

OMB/Purchasing N/A

Risk Management N/A

AIRPORT DIRECTOR APPROVAL \_\_\_\_\_

  
Peter J. Horton

DOCUMENTATION: Included X

Not Required

AGENDA ITEM # \_\_\_\_\_

DISPOSITION: \_\_\_\_\_



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**AVIGATION EASEMENT**  
**Key West International Airport**  
**Noise Insulation Program**

THIS EASEMENT AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, hereinafter referred to as "the Homeowner," in favor of the MONROE COUNTY BOARD OF COUNTY COMMISSIONERS, a body politic and corporate, hereinafter referred to as "BOCC."

**RECITALS:**

- A. The Homeowner is the fee simple titleholder to certain real property ("the Property") located in Monroe County, Florida, more particularly described as follows:

also identified as street address: \_\_\_\_\_.

- B. The BOCC is the owner and operator of Key West International Airport ("the Airport").
- C. It is the purpose of this Easement Agreement to grant to the BOCC a perpetual avigation easement, on terms as hereinafter set forth.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars and other valuable considerations, the receipt and adequacy of which is hereby acknowledged by both parties, the Homeowner and the BOCC agree as follows:

1. The Homeowner on behalf of the Homeowner and its heirs, assigns and all successors in interest, does hereby grant, bargain, sell and convey to the BOCC, its successors and assigns, a perpetual avigation easement over the Property. The use of the easement shall include the right to generate and emit noise, and to cause other effects as may be associated with aircraft landing and taking off at the Airport. This easement shall apply to all such aircraft activity at the Airport, with a maximum applicable noise level as projected on the Year 2003 Noise Exposure Map, Without Program Implementation (see attached), and it being the intent of the parties that all such Airport activity shall be deemed to be included within the purview of this easement so long as the noise level does not exceed the referenced maximum (Year 2003 Noise Exposure Map, Without Program Implementation).
2. This easement shall be perpetual in nature and shall bind and run with the title to the Property and shall run to the benefit of the BOCC or its successor in interest as owner and operator of the Airport.



## AVIGATION EASEMENT

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3. The Homeowner on behalf of the Homeowner, its heirs, assigns and successors in interest, does hereby release the BOCC, and any and all related parties of the BOCC, including but not limited to BOCC members, officers, managers, agents, servants, employees and lessees, from any and all claims, demands, damages, debts, liabilities, costs, attorneys fees or causes of action of every kind or nature for which the Homeowner or its heirs, assigns, or successors currently have, have in the past possessed, or will in the future possess, as a result of normal Airport operations or normal aircraft activities and noise levels related to or generated by normal Airport activity, or may hereafter have as a result of use of this easement, including but not limited to damage to the above-mentioned property or contiguous property due to noise, and other effects of the normal operation of the Airport or of aircraft landing or taking off at the Airport.
4. Should either party hereto or any of their successors or assigns in interest retain counsel to enforce any of the provisions herein or protect its interest in any matter arising under this Agreement, or to recover damages by reason of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to all costs, damages and expenses incurred including, but not limited to, attorneys fees and costs incurred in connection therewith, including appellate action.
5. No provision of this Agreement is to be interpreted for or against any party because that party or that party's legal representative drafted such provision. This agreement shall be interpreted and construed according to the laws of the State of Florida.
6. No breach of any provision of this Agreement may be waived unless in writing. Waiver of any one breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement. This Agreement may be amended only by written instrument executed by the parties in interest at the time of the modification. In the event that any one or more covenant, condition or provision contained herein is held invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other provision hereof so long as the remaining provisions do not materially alter the rights and obligations of the parties. If such condition, covenant or other provision shall be deemed invalid due to this scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.
7. In the event the Airport shall be subdivided into more than one parcel, or the Airport or a portion thereof becomes subject to operation, management or administration by a party in addition to or in lieu of the BOCC, then and in that event the parties agree that same shall not terminate or otherwise affect this Agreement so long as a portion of the Airport continues to operate for standard airport flight purposes, and that any such successor in interest to the BOCC shall be entitled to all of the benefits running to the BOCC hereunder.



**AVIGATION EASEMENT**

8. If the maximum applicable noise level as projected on the Year 2003 Noise Exposure Map, Without Program Implementation (see attached) is exceeded, then the BOCC will, upon simple demand in writing from the Homeowner, cancel this Agreement from the public records.

This Easement Agreement is executed as of the date first above written.

Witnesses:

MONROE COUNTY  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_  
Mayor  
  
\_\_\_\_\_  
"BOCC"  
  
\_\_\_\_\_  
"HOMEOWNER"

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_ as Mayor of the Monroe County Board of County Commissioners, a body politic and corporate.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_  
Homeowner

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:**  
*Pedro J. Mercado*  
\_\_\_\_\_  
**PEDRO J. MERCADO  
ASSISTANT COUNTY ATTORNEY**



AVIGATION EASEMENT

MORTGAGEE CONSENT

\_\_\_\_\_ MORTGAGE COMPANY ("Mortgagee"), is the owner and holder of a mortgage lien upon the property described in the foregoing easement ("the Property") pursuant to a mortgage recorded in Official Records Book \_\_\_\_, Page \_\_\_\_, Public Records of Monroe County, Florida. Mortgagee hereby consents to subjecting the Property to the terms and provisions of the foregoing easement.

Witnesses: \_\_\_\_\_ MORTGAGE COMPANY

\_\_\_\_\_  
Signature of Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name of Witness

As its: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name of Witness

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ MORTGAGE COMPANY, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath. If no type of identification is indicated, the above-named person is personally known to me.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print Name of Notary Public

I am a Notary Public of the State of \_\_\_\_\_  
My Commission Expires on \_\_\_\_\_



# LEGEND

## Compatible Land Uses

- Airport
- Commercial
- Community Facilities
- Government/Military
- Multi Family Residential
- Parks/Recreational
- Roads
- Single Family Residential
- Mobile Homes
- Transient Lodging
- Undetermined
- Vacant
- Mixed Use
- Water

## Noncompatible Land Uses

- Community Facilities
- Mobile Homes
- Multi-Family Residential
- Single Family Residential
- Transient Lodging

Day Night Level (DNL)  
Contours (dB)

65



FIGURE:  
5.2

05/27/98

2003 FUTURE CONDITION  
NOISE EXPOSURE MAP  
WITHOUT  
PROGRAM IMPLEMENTATION

KEY WEST  
INTERNATIONAL AIRPORT

URS Greiner